




UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
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Seattle, WA 98115

March 30, 2005

MEMORANDUM FOR: The Record

FROM: D. Robert Lohn 
Regional Administrator

SUBJECT: ESA Section 10(a)(1)(B) Findings for Issuance of Permit 1481
– DECISION MEMORANDUM

This memorandum provides the findings and determinations on issuance of an Endangered Species Act (ESA) Section 10(a)(1)(B) permit (#1481) for incidental take of listed salmon and steelhead in recreational fisheries in the state of Idaho through May 31, 2010. The Idaho Department of Fish and Game (IDFG) requested issuance of an ESA Section 10(a)(1)(B) to authorize the annual takes of adult and juvenile, threatened, Snake River spring/summer and fall chinook salmon (*Oncorhynchus tshawytscha*), and steelhead (*O. mykiss*), and endangered Snake River sockeye salmon (*O. nerka*) incidental to recreational fisheries for non-listed, hatchery-produced, chinook salmon and steelhead and resident game fish species. The subject recreational fisheries are ongoing, otherwise-legal activities managed by IDFG that occur in waters that may be occupied by one or more species of listed anadromous salmonids and in which there may be some incidental take of listed fish.

Permit 1481 authorizes incidental take of listed Snake River salmon and steelhead resulting from recreational fisheries managed by the IDFG. The permitted fisheries are classified by IDFG and generally described as follows:

Resident Fish Species Sport Fishing - General Fishing Regulations. The general statewide stream season in Idaho runs from Saturday of the Memorial Day weekend through November 30. Exceptions to the general stream season include certain river sections that are open year-round and rivers or stream sections that are closed to all fishing for all or part of the general stream season. Most lakes, ponds and reservoirs are open to fishing the entire year, with exceptions to protect particular resources.

Anadromous Salmon Sport Fishing - Anadromous Salmon Fishing Regulations. Fisheries for spring/summer chinook salmon occur in the Clearwater River basin, Snake river, Lower Salmon River, South Fork Salmon River, Rapid River and portions of the Little Salmon River and typically occur from mid-April through the first full weekend in August (no later than August 7). Closing salmon fishing on or before August 7 is designed to protect listed fall chinook. Chinook fisheries are selective for non-listed,

hatchery-produced fish which are marked by removal of the adipose fin. Barbless hooks are required to facilitate release of fish. All unmarked fish, including listed hatchery fish and all naturally produced fish regardless of listing status, are recognizable by an intact adipose fin, and must be released unharmed if incidentally hooked. Seasons are set based on status of listed fish, quotas of non-listed components and annual take limits of ESA-listed components of the run. Chinook fisheries may be closed on short notice when in-season monitoring indicates that criteria are met.

Spring and Fall Steelhead Sport Fishing - Steelhead Fishing Regulations. Steelhead fishing seasons are restricted to the Clearwater River and Middle Fork Clearwater River downstream from Clear Creek, the North Fork Clearwater River downstream from Dworshak Dam, the South Fork Clearwater River, the Snake River downstream from Hells Canyon Dam, the Salmon River downstream from Redfish Lake Creek, and the Little Salmon River downstream from Smokey-Boulder Bridge. The steelhead harvest season lasts from September 1 through April 30, except steelhead may not be harvested until October 15th on the Clearwater River and the mainstem Salmon River closes on March 31st. Tributaries and the headwaters of the listed rivers are closed to harvest of steelhead.

General regulations for resident species recreational fishing and steelhead regulations are set biennially. Anadromous salmon fishing regulations are set annually, based on analysis of each year's run projections. Salmon regulations are often not finalized until actual counts of salmon migrating upriver confirm pre-season predictions of run size and composition. The regulations may be adjusted within one or two weeks of the season opening. The permit includes conditions that allow the permittee some degree of management flexibility in order to adjust fisheries.

ESA SECTION 7 CONSULTATION AND MAGNUSON-STEVENSON ACT EFH CONSULTATION

Because the proposed activities are expected to take species listed as endangered and threatened under the ESA, an ESA Section 7 formal consultation was conducted on the issuance of the permit. A Biological Opinion was prepared that provides an analysis of the potential impacts on ESA-listed anadromous fish species as a result of issuing the permit. The Biological Opinion concluded that issuance of the permit is not likely to jeopardize the continued existence of endangered Snake River sockeye salmon, or threatened Snake River spring/summer chinook salmon, Snake River fall chinook salmon, or Snake River Basin steelhead, or result in the destruction or adverse modification of the species' critical habitats (where designated).

The proposed recreational fishing activities will be conducted in designated Essential Fish Habitat designated for chinook salmon under the Magnuson-Stevens Fishery Conservation and Management Act. NMFS consulted under the Magnuson-Stevens Act to evaluate the potential effects of the proposed action on EFH for chinook salmon. This consultation, included in the ESA Biological Opinion, concluded that the proposed activities would not adversely affect designated EFH for chinook and coho salmon.

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

An Environmental Assessment (EA) was prepared that considered the environmental effects and impacts on the human environment of the NMFS action of issuing a Section 10(a)(1)(B) permit to IDFG that authorizes annual takes of ESA-listed anadromous fish species associated with the IDFG's recreational fishing regulations. The EA resulted in a January 1, 2005, Finding of No Significant Impact (FONSI). A draft of the EA was made available for public comment on May 12, 2004 (69 FR 26363). Several sets of comments were received prior to the end of the public comment period. Summaries of the comments and NMFS responses to those comments are included in the final EA.

COMMENTS ON PERMIT APPLICATION

The application for this permit underwent a 30-day public comment period following notification of receipt in the *Federal Register*. The application was also distributed to regional technical experts and resource managers, including the Northwest Fisheries Science Center, NMFS, for comments. During the 30-day public review period, several comments were received. While the comments were primarily directed at the draft NEPA analysis, these comments were considered in the processing of this proposed action, and are described in detail in the EA, along with NMFS' responses.

The proposed recreational fisheries are not controversial on the whole, although one component may generate some controversy: the potential for fisheries in the upper Salmon River targeting listed hatchery spring/summer chinook salmon returning to Sawtooth and Pahsimeroi Hatcheries excess to broodstock needs. Chinook salmon fisheries in this area have not occurred since 1978, due to small population levels and small hatchery returns. The permit includes criteria requiring that, before fisheries could be implemented, broodstock needs at the hatcheries would be met and recreational harvest would only occur when numbers of natural fish exceed minimum escapement numbers. Only if these criteria are met would recreational fisheries be allowed, to utilize listed and non-listed hatchery-origin chinook salmon in excess of conservation needs. This potential is made possible by substantially increased returns of chinook salmon to the upper Salmon River area. For example, five-year redd counts during the period 1980 to 1999 range from 300 to 1,050 fish; the preseason projection for 2005 is for a return of approximately 2,200 natural-origin fish to return to the area.

Because of fishery design and extensive monitoring and reporting, the proposed activities will not have a significant effect on the human environment, nor will they involve any unique or unknown risks. The proposed activities are believed to have a positive effect on the quality of the human environment as they provide substantial recreational and economic benefits. The proposed activities do not establish a precedent for future actions and will not have a cumulatively significant impact on the species or their ecosystems. No significant short-term negative effects are anticipated.

NMFS believes that the conduct of sustainable recreational fisheries is a prudent and appropriate use of the hatchery-produced salmon so long as there will be no negative affect on cumulative recovery efforts associated with ESA-listed anadromous fish populations. It is expected that the proposed activities will not cause any significant environmental impacts. The permit provides a sound biological framework for providing tribal and recreational fishing opportunities consistent with initiatives underway to recover listed species.

PERMIT ISSUANCE CRITERIA

- (1) Was the permit action applied for in good faith?

The Northwest Region, NMFS, finds that the permit was applied for in good faith.

- (2) If granted and exercised, will the permit *not* operate to the disadvantage of endangered and/or threatened species?

The Northwest Region, NMFS, finds that issuance of the permit will not operate to the disadvantage of endangered and/or threatened species.

- (3) Will the permit be consistent with the purposes and policy set forth in Section 2 of the ESA?

The Northwest Region, NMFS, finds that issuance of the permit is consistent with the purposes and policy set forth in Section 2 of the ESA.

- (4) Will the permit further a bona fide and necessary or desirable scientific purpose or enhance the propagation or survival of the endangered and/or threatened species, taking into account the benefits anticipated to be derived on behalf of the endangered and/or threatened species?

The permit is for incidental take in recreational fisheries. The Biological Opinion concludes that the recreational fisheries covered by the permit are designed to provide an adequate level of protection for listed species and that conduct of the fisheries will not contribute to the risk of extinction or impede the recovery and survival of the species.

- (5) Has there been an analysis of the status of the population of each of the ESA-listed species requested to be taken and the effects of the proposed action on the populations, both direct and indirect?

A Biological Opinion under Section 7 of the ESA addressing the takes of endangered and threatened species associated with the issuance of a permit to IDFG has been prepared (see ESA Section 7 Consultation section above). The opinion includes descriptions of the status of each ESA-listed anadromous fish ESU expected to be affected and the potential effects of the proposed action, both direct and indirect, on those ESUs.

NMFS determined that EFH for chinook salmon, sockeye salmon or steelhead would not be adversely affected by the proposed activities allowed under permit 1481.

- (6) If a live animal is to be taken, transported, and/or held in captivity, does the applicant have the qualifications to conduct activities involving ESA-listed species? Does the applicant have access to adequate facilities for the proper care and maintenance of ESA-listed species?

The Northwest Region, NMFS, finds that the Permit Holder has the qualifications to conduct activities involving ESA-listed species and have access to adequate facilities for the proper care and maintenance of ESA-listed anadromous fish species.

- (7) Should non-endangered species or population stocks be used instead?

The proposed recreational fisheries target only hatchery-origin chinook salmon and steelhead. The goal of the recreational fisheries program is to provide the benefits of recreational harvest of surplus resident and anadromous fish while applying protective regulations that are adequate to prevent harm to listed spring/summer and fall chinook, sockeye, and steelhead populations in the Snake River basin.

- (8) Were the individual ESA-listed species proposed to be taken born in captivity or will they be taken from the wild?

No direct take of ESA-listed naturally produced spring/summer and fall chinook, sockeye, or steelhead is proposed and measures have been adopted to minimize incidental take of listed species.

- (9) Are adequate provisions in place for the disposition of the ESA-listed species if and when the applicant's project or program terminates?

The Northwest Region, NMFS, finds that IDFG's permit application includes adequate provisions for the disposition of ESA-listed species, in the event that any incidental take occurs.

- (10) How do the applicant's needs, program, and facilities compare and relate to proposed and ongoing projects and programs?

IDFG is the state agency responsible for managing recreational fisheries within the state. Substantial numbers of surplus, hatchery-origin anadromous fish are produced by mitigation programs designed to provide fisheries. Recreational fishing for resident fish species occurs in most waters that are occupied by listed anadromous species.

Implementation of recreational fisheries in these waters is consistent with the Policy for Conserving Species Listed or Proposed for Listing Under the Endangered Species Act

While Providing and Enhancing Recreational Fisheries Opportunities (61 FR 27978), which was jointly issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on June 3, 1996. Among other actions, the order requires all Federal agencies to aggressively work to promote compatibility and reduce conflict between administration of the ESA and recreational fisheries.

- (11) Do the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application?

The Northwest Region, NMFS, finds that the expertise, facilities, and resources available to IDFG are adequate to successfully accomplish the objectives stated in the application.

- (12) Have the opinions or views of scientists or other persons or organizations knowledgeable about the species that is the subject of the application or of other matters germane to the application been considered?

The Northwest Region, NMFS, has considered the opinions and views of Regional scientific experts, resource managers and public comments on the proposed action (see “Comments” above).

Issuance of the permit, as required by the ESA, is based on the finding that the application: (1) Was proposed in good faith, (2) will not operate to the disadvantage of the endangered species that are the subject of the permit, and (3) is consistent with the purposes and policies set forth in Section 2 of the ESA. Therefore I have approved issuance of the permit.